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SERVICE DATE – LATE RELEASE AUGUST 5, 2016

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36028]

Kanawha River Railroad, L.L.C.—Lease Exemption Containing Interchange

Commitment—Norfolk Southern Railway Company

AGENCY: Surface Transportation Board.

ACTION: Clarification of Notice of Exemption.

On July 1, 2016, Kanawha River Railroad, L.L.C. (KNWA), filed a verified notice of exemption under 49 C.F.R. § 1150.31 to lease and operate nine rail segments totaling 308.85 miles from Norfolk Southern Railway Company (NSR) and to assume by assignment NSR-held trackage rights over a rail line owned by CSX Transportation, Inc. (CSXT). The notice filed on July 1, 2016 listed the nine rail segments and made reference to the assignment of trackage rights.¹

On July 15, 2016, notice of the exemption was served and published in the Federal Register (81 Fed. Reg. 46,153). The notice listed the nine rail segments, but did not specifically recite the assignment of trackage rights. Nor did the notice state that the assumption of the assignment was in any way excluded from the transaction deemed properly invoked by the NSR's notice invoking the class exemption.

¹ On August 1, 2016, a correction to the July 15, 2016 notice of exemption was served.

On August 3, 2016, KNEWA filed a Request for Clarification, noting that CSXT had expressed reluctance to accommodate the trackage rights assignment, because it was not specifically recited in the Board-issued notices. To remove uncertainty and to facilitate KNEWA's ability to serve its customers, KNEWA and NSR requested that the Board clarify that KNEWA possesses the requisite exemption authority to undertake the assignment of NSR's trackage rights over CSXT.

To clarify, because the Board permitted KNEWA's action invoking the class exemption at 49 CFR § 1150.31 to take effect without modification, and because KNEWA properly invoked the class exemption for the assignment of trackage rights in connection with the lease of the lines from NSR, KNEWA properly acquired the trackage rights when the notice of exemption became effective. That the Board did not enumerate those ancillary rights in the notice to the public published in the Federal Register does not operate to negate KNEWA's acquisition of the rights by properly invoking the class exemption.

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"WWW.STB.DOT.GOV."

Decided: August 5, 2016.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.